

**ALABAMA DEPARTMENT OF  
ENVIRONMENTAL MANAGEMENT**

IN THE MATTER OF:	)	
	)	
Cloverleaf Motel, Inc.	)	CONSENT ORDER NO.:
Calera, Shelby County, Alabama	)	
	)	
Demolition – Cloverleaf Motel	)	
<u>Clanton, Chilton County, Alabama</u>	)	

**PREAMBLE**

This Special Order by Consent is made and entered into by the Alabama Department of Environmental Management (hereinafter, “the Department”) and Cloverleaf Motel, Inc. (hereinafter, “Cloverleaf”) pursuant to the provisions of the Alabama Environmental Management Act, Ala. Code §§ 22-22A-1 to 22-22A-16 (2006 Rplc. Vol.), the Alabama Air Pollution Control Act, Ala. Code §§ 22-28-1 to 22-28-23 (2006 Rplc. Vol.), and the regulations promulgated pursuant thereto.

**STIPULATIONS**

1. Cloverleaf was the site owner where demolition activities at the Cloverleaf Motel (hereinafter “the Motel”) were conducted. The Motel site is located at 7<sup>th</sup> Street South, in Clanton, Chilton County, Alabama.
2. The Department is a duly constituted department of the State of Alabama pursuant to Ala. Code §§ 22-22A-1 to 22-22A-16 (2006 Rplc. Vol.).
3. Pursuant to Ala. Code § 22-22A-4(n) (2006 Rplc. Vol.), the Department is the state air pollution control agency for the purposes of the federal Clean Air Act, 42 U.S.C. 7401 to 7671q, as amended. In addition, the Department is authorized to administer and enforce the provisions of the Alabama Air Pollution Control Act, Ala. Code §§ 22-28-1 to 22-28-23 (2006 Rplc. Vol.).

4. The U.S. Environmental Protection Agency's National Emission Standard for Asbestos, found at 40 C.F.R. § 61, Subpart M, is incorporated by reference in ADEM Admin. Code r. 335-3-11-.02(12).

5. 40 C.F.R. § 61.145(a) requires that a subject facility be thoroughly inspected for the presence of asbestos prior to the commencement of the demolition or renovation. There were no asbestos inspections of the Motel prior to the commencement of the demolition activities, a violation of 40 C.F.R. § 61.145(a).

6. 40 C.F.R. § 61.145(b)(3)(i) requires the owner or operator of a demolition or renovation activity to provide written Notice of Intention to Demolish or Renovate (hereinafter, "Notice of Intention") at least ten weekdays before demolition, asbestos stripping or removal work or any other activity which disturbs the asbestos begins.

7. On March 2, 2009, demolition activities were documented by Department personnel conducting a complaint investigation of Cloverleaf's completed demolition of the Motel. The Department did not receive a Notice of Intention from Cloverleaf within at least ten working days before demolition activities at the Motel began, a violation of 40 C.F.R. § 61.145(b)(3)(i).

8. Cloverleaf consents to abide by the terms of the following Order and to pay the civil penalty assessed herein.

9. The Department has agreed to the terms of this Consent Order in an effort to resolve the violations cited herein without the unwarranted expenditure of State resources in further prosecuting the above violations. The Department has determined that the terms contemplated in this Consent Order are in the best interests of the citizens of Alabama.

#### **CONTENTIONS**

10. Cloverleaf contends that it contracted with Donald Liveoak Excavating and Trucking ("Liveoak") to effect the demolition, cleanup and disposal of the Motel. It

was Cloverleaf's expectation that Liveoak would be responsible for securing all pre-demolition approvals and authorizations, and to dispose of the material lawfully.

11. Pursuant to Ala. Code § 22-22A-5(18)c. (2006 Rplc. Vol.), in determining the amount of any penalty, the Department must give consideration to the seriousness of the violation, including any irreparable harm to the environment and any threat to the health or safety of the public; the standard of care manifested by such person; the economic benefit which delayed compliance may confer upon such person; the nature, extent and degree of success of such person's efforts to minimize or mitigate the effects of such violation upon the environment; such person's history of previous violations; and the ability of such person to pay such penalty. Any civil penalty assessed pursuant to this authority shall not be less than \$100.00 or exceed \$250,000.00. Each day such violation continues shall constitute a separate violation. In arriving at this civil penalty, the Department has considered the following:

A. SERIOUSNESS OF THE VIOLATION: The actions of Cloverleaf, by not assuring that its contractor arranged for the proper inspection of the Motel for asbestos-containing materials, could have exposed workers and others nearby to elevated levels of asbestos fibers.

B. THE STANDARD OF CARE: There appeared to be insufficient care taken by Cloverleaf to comply with the applicable requirements of the ADEM Admin. Code R.

C. ECONOMIC BENEFIT WHICH DELAYED COMPLIANCE MAY HAVE CONFERRED: Cloverleaf likely derived economic benefit by not engaging proper pre-inspections and possibly derived additional economic benefit by not properly removing asbestos containing materials.

D. EFFORTS TO MINIMIZE OR MITIGATE THE EFFECTS OF THE VIOLATION UPON THE ENVIRONMENT: There were no efforts by Cloverleaf to mitigate possible effects of these violations upon the environment.

E. HISTORY OF PREVIOUS VIOLATIONS: Cloverleaf has no known prior violations of asbestos regulations with the Department.

F. THE ABILITY TO PAY: Cloverleaf has not alleged an inability to pay the civil penalty.

G. OTHER FACTORS: It should be noted that this Special Order by Consent is a negotiated settlement and, therefore, the Department has compromised the amount of the penalty it believes is warranted in this matter in the spirit of cooperation and the desire to resolve this matter amicably, without incurring the unwarranted expense of litigation.

**ORDER**

THEREFORE, Cloverleaf, along with the Department, desires to resolve and settle the compliance issues cited above. The Department has carefully considered the facts available to it and has considered the six penalty factors enumerated in Ala. Code §22-22A-5(18)c. (2006 Rplc. Vol.), as well as the need for timely and effective enforcement, and the Department believes that the following conditions are appropriate to address the violations alleged herein. Therefore, the Department and Cloverleaf agree to enter into this ORDER with the following terms and conditions:

A. Cloverleaf agrees to pay to the Department a civil penalty in the amount of \$2,000.00 in settlement of the violations alleged herein within forty-five days from the effective date of this Consent Order. Failure to pay the civil penalty within forty-five days from the effective date may result in the Department's filing a civil action in the Circuit Court of Montgomery County to recover the civil penalty.

B. Cloverleaf agrees that all penalties due pursuant to this Consent Order shall be made payable to the Alabama Department of Environmental Management by certified or cashier's check and shall be remitted to:

Office of General Counsel  
Alabama Department of Environmental Management  
P.O. Box 301463  
Montgomery, AL 36130-1463

C. That immediately upon receipt of this Order and continuing thereafter, Cloverleaf shall ensure immediate and future compliance with 40 C.F.R. § 61, Subpart

M as adopted in the ADEM Admin. Code r. 335-3-11-.05, particularly as it applies to renovation and demolition operations.

D. The parties agree that this Consent Order shall apply to and be binding upon both parties, their directors, officers, and all persons or entities acting under or for them. Each signatory to this Consent Order certifies that he or she is fully authorized by the party he or she represents to enter into the terms and conditions of this Consent Order, to execute the Consent Order on behalf of the party represented, and to legally bind such party.

E. The parties agree that this Consent Order, subject to the terms of these presents and subject to provisions otherwise provided by statute, is intended to operate as a full resolution of the violations which are cited in this Consent Order.

F. Cloverleaf agrees that it is not relieved from any liability if he fails to comply with any provision of this Consent Order.

G. For purposes of this Consent Order only, Cloverleaf agrees that the Department may properly bring an action to compel compliance with the terms and conditions contained herein in the Circuit Court of Montgomery County. Cloverleaf also agrees that in any action brought by the Department to compel compliance with the terms of this Agreement, Cloverleaf shall be limited to the defenses of *Force Majeure*, compliance with this Agreement and physical impossibility. A *Force Majeure* is defined as any event arising from causes that are not foreseeable and are beyond the reasonable control of Cloverleaf, including its contractors and consultants, which could not be overcome by due diligence (i.e., causes which could have been overcome or avoided by the exercise of due diligence will not be considered to have been beyond the reasonable control of Cloverleaf) and which delays or prevents performance by a date required by the Consent Order. Events such as unanticipated or increased costs of performance, changed economic circumstances, normal precipitation events, or failure to obtain federal, state, or local permits shall not constitute *Force Majeure*. Any request for a modification of deadline must be accompanied by the reasons (including

documentation) for each extension and the proposed extension time. This information shall be submitted to the Department a minimum of ten working days prior to the original anticipated completion date. If the Department, after review of the extension request, finds the work was delayed because of conditions beyond the control and without the fault of Cloverleaf, the Department may extend the time as justified by the circumstances. The Department may also grant any other additional time extension as justified by the circumstances, but it is not obligated to do so.

H. The Department and Cloverleaf agree that the sole purpose of this Consent Order is to resolve and dispose of allegations and contentions stated herein concerning the factual circumstances referenced herein. Should additional facts and circumstances be discovered in the future concerning the facility which would constitute possible violations not addressed in this Consent Order, then such future violations may be addressed in Orders as may be issued by the Director, litigation initiated by the Department, or such other enforcement action as may be appropriate, and Cloverleaf shall not object to such future orders, litigation or enforcement action based on the issuance of this Consent Order if future orders, litigation, or other enforcement action address new matters not raised in this Consent Order.

I. The Department and Cloverleaf agree that this Consent Order shall be considered final and effective immediately upon signature of all parties. This Consent Order shall not be appealable, and Cloverleaf does hereby waive any hearing on the terms and conditions of same.

J. The Department and Cloverleaf agree that this Order shall not affect Cloverleaf's obligation to comply with any Federal, State, or local laws or regulations.

K. The Department and Cloverleaf agree that the final approval and entry into this Order are subject to the requirements that the Department give notice of proposed Orders to the public, and that the public have at least thirty days within which to comment on the Order.

L. The Department and Cloverleaf agree that, should any provision of this Order be declared by a court of competent jurisdiction or the Environmental Management Commission to be inconsistent with Federal or State law and therefore unenforceable, the remaining provisions hereof shall remain in full force and effect.

M. The Department and Cloverleaf agree that any modifications of this Order must be agreed in writing signed by both parties.

N. The Department and Cloverleaf agree that, except as otherwise set forth herein, this Order is not and shall not be interpreted to be a permit or modification of an existing permit under Federal, State or local law, and shall not be construed to waive or relieve Cloverleaf of his obligations to comply in the future with any permit.

Executed in duplicate, with each part being an original.

**CLOVERLEAF MOTEL, INC.**

**ALABAMA DEPARTMENT OF  
ENVIRONMENTAL MANAGEMENT**

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By: Nouman Malik  
Its: President

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Onis "Trey" Glenn, III  
Director

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Date Signed

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Date Executed